

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1574 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATEL MAHENDRABHAI AMBALAL

Versus

CHIEF OFFICER CHANASMA MUNICIPAL BOROUGH

Appearance:

1. Special Civil Application No. 1574 of 2004
MR UTKARSH JANI for MR BG JANI for Petitioner No. 1
MRS KRISHNA G RAWAL for Respondent No. 1
MR KUNJAL PANDYA AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 29/09/2004

ORAL JUDGEMENT

RULE.

In the facts and circumstances of the case, the

petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner is challenging the Resolution dated 12.12.2003 of the Chanasma Municipal Borough terminating the petitioner's services w.e.f. 13.12.2003 and the order dated 6.1.2004 of Collector, Patan permanently staying Resolution No.15 dated 15.6.2002 of Chanasma Municipal Borough under which the petitioner was appointed as a daily wager Bore Operator.

3. The petitioner was appointed as an Octroi Clerk under the Chanasma Municipality on 1.6.1998. The said appointment was as a daily wager. The petitioner rendered services as such for three years. However, upon abolition of octroi w.e.f. 1.5.2001, the petitioner was rendered surplus. It appears that on account of abolition of octroi a large number of employees in the Octroi department of all the Municipalities were rendered surplus and, therefore, the State Government considering their plight issued instructions dated 28.5.2001 (Annexure-A). Through the said instructions, the State Government instructed the Director of Municipalities to bring to the notice of all Municipalities to take the following steps:-

- (i) The employees who were daily wagers and who were rendered surplus on account of abolition of octroi may be included in the daily wagers establishment of the Municipality with effect from the original appointment;
- (ii) In case of need to retrench any employees, the rule of "last come first go" shall be followed;

It appears that in view of the aforesaid instructions, the Municipality appointed the petitioner as a daily wager Bore Operator by the Municipal Borough Resolution No.15 dated 15.6.2002. It was mentioned in the resolution that two bores were to be operated at two different places specified in the resolution and, therefore, two surplus employees from the Octroi department be absorbed on the basis of seniority on the same salary. The resolution was, therefore, in compliance with and in accordance with the aforesaid instructions dated 28.5.2001 of the State Government.

However, it appears that one of the employees of the Octroi department Patel Chimanbhai Becharlal submitted a complaint dated 1.8.2003 before the Collector, Patan making a grievance that he was not

absorbed as a Bore Operator, but the petitioner was wrongly absorbed as a Bore Operator. The Collector, therefore, took up the said complaint as a proceeding under Section 258 of the Gujarat Municipalities Act and granted stay order dated 6.12.2003 staying the operation of the aforesaid resolution dated 15.12.2002 which had already been implemented. The Municipal Borough complied with the said stay order by passing the impugned order dated 12.12.2003 (Annexure-C) and terminated the petitioner's services and the services of another daily wage Bore Operator. The proceedings before the Collector ultimately culminated into the impugned order dated 6.1.2004 whereby the Collector permanently stayed the aforesaid Resolution No.15 dated 15.6.2002 under Section 258 of the Act on the ground that the Municipality had not obtained any prior permission of the Director of Municipalities before appointing the petitioner as a Bore Operator.

The petitioner has, therefore, moved this Court.

4. Mr Utkarsh Jani, learned counsel for the petitioner has submitted that the impugned order dated 6.1.2004 of the Collector, Patan suffers from the vice of principles of natural justice as the petitioner was not joined as a party in the proceedings under Section 258 of the Act nor was the petitioner given any opportunity of hearing.

On merits, it is submitted that the State Government itself had instructed all the Municipalities through the Director of Municipalities on 28.5.2001 (Annexure-A) that the municipal staff rendered surplus on account of abolition of octroi was required to be absorbed in the set-up of the Municipality. In view of such specific instructions, the only question which was required to be considered by the Municipality was whether sanctioned posts were available for absorbing such employees. Mr Jani for the petitioner points out from Government Resolution dated 22.1.2004 (Annexure-E) that the minimum sanctioned set-up for all the Municipalities includes inter-alia, one Boreman per Bore in the Water Supply & Sewage branch of the concerned Municipality. Chanasma Municipal Borough has seven bores and, therefore, seven posts of Bore Operators or pumpmen are sanctioned posts against which only five persons were appointed as Bore Operators and, therefore, there were two vacancies. The Municipal Borough was justified in appointing the petitioner and another person as Bore operators. Since the appointment was on the sanctioned set-up, no permission of the Director of Municipalities

was required to be obtained which is clear from conditions No.3, 4 and 5 stipulated in the aforesaid Government Resolution dated 22.1.2004.

5. Ms KG Rawal, learned counsel for the Municipal Borough has relied on the affidavit filed by the Chief Officer and has supported the petitioner's case that the petitioner is appointed against a sanctioned post as there are seven bores and the Municipal Borough is justified in employing seven Bore Operators. Before the petitioner and another person were appointed as Bore Operators only five posts of Bore Operators were filled in. Hence, the petitioner's appointment is against the post on the sanctioned set-up and, therefore, no permission of Director of Municipalities was required.

6. Mr Kunjal Pandya, learned AGP for the respondents has relied upon the affidavit filed by Collector, Patan stating that at the hearing before the Collector the Chief Officer had admitted that the petitioner was appointed without taking any prior permission of the Director of Municipalities. It is further contended by the learned AGP that under Section 50 of the Gujarat Municipalities Act, the prior approval of the Director of Municipalities was required before making any appointment.

7. Having heard the learned counsel for the parties, it appears to the Court that the impugned order passed by the Collector is not in accordance with law and is passed on the basis of irrelevant considerations. In the first place, Section 50 of the Gujarat Municipalities Act requires prior approval of the Director of Municipalities for creation of a new post. The Municipal Borough in the instant case did not, or purport to, create any new post. Even if any permission was required to be obtained, the Government instructions dated 28.5.2001 at Annexure-A to the petition are very clear that the Government itself had considered the representations made on behalf of the employees/daily wagers who were retrenched on account of abolition of octroi w.e.f. 1.5.2001 and, therefore, surplus daily wager octroi staff were required to be absorbed as daily wager employees. The Chanasma Municipal Borough had accordingly absorbed the petitioner as a daily wager bore operator. Secondly, seven Bore Operators are required in view of the number of bores at different places. Now, in view of the Government Resolution dated 22.1.2004 (Annexure-E), as there are seven bores being operated by the Municipal Borough, seven sanctioned posts of bore operators are available. The petitioner is one of the seven bore operators - which

facts are not disputed by the learned AGP on behalf of the State Government and the Director of Municipalities.

In view of the above discussion, the petition deserves to be allowed and it is not necessary to set aside the order of the Collector merely on the ground of breach of violation of the principles of natural justice and to remand the matter to the Collector.

8. The petition is accordingly allowed. The impugned order dated 6.1.2004 of Collector, Patan in Case No.253 of 2004 (Annexure "D") and the Resolution dated 12.12.2003 of the Chanasma Municipal Borough (Annexure "C") (which was based on Collector's interim stay order dated 6.12.2003) are quashed and set aside. So also, the said interim stay order dated 6.12.2003 will not survive. The respondents are directed to take the petitioner back in service with continuity of service for all purposes. This direction shall be complied with within one month from today.

As far as salary for the intervening period is concerned, it will be open to the petitioner to make a representation to the Chanasma Municipal Borough which shall consider it within one month from the date of receipt of the representation.

9. Rule is made absolute.

Direct service is permitted.

(M.S. SHAH, J.)

zgs/-